



NOVA SCOTIA BARRISTERS' SOCIETY

## **COMPETENCY FRAMEWORK\***

This competency framework further develops the objectives for the Articling and Admission Process by identifying performance criteria for each identified skill, behaviour and attitude listed in the objective. The performance criteria will form the foundation for evaluating competency.

There are three sections to this framework. Each Articled Clerk must exhibit competency in each area by the time of the Articled Clerk's call to the Bar. The four areas are:

1. Practice Skills;
2. Personal Practice and Office Management; and
3. Ethics and Professional Responsibility.

The goal of the articling process is to develop over the course of the articling term the necessary skills required of a newly called lawyer as measured by the skills outlined in this document.

*\*Adapted from the Competency Framework developed by the Law Society of Alberta and used with permission.*

## 1. PRACTICE SKILLS:

To acquire appropriate competency in legal practice skills, an Articled Clerk must acquire experience in the following skills: Problem-Solving, Legal Research, Writing, Legal Drafting, Interviewing and Advising, and Advocacy and Dispute Resolution. An Articled Clerk should understand how to use these skills in the contexts of: (1) transactions and (2) resolving disputes. Whatever the nature of the legal practice of the lawyer or firm providing guidance to the Articled Clerk, the necessity to learn about, understand, and demonstrate familiarity with these skills will be essential. This knowledge may be acquired through broad exposure to a wide range of substantive law areas or through detailed exposure to a narrower area of law.

### A. Problem-Solving

A newly called lawyer must:

<b>Competency</b>	<b>Performance Criteria</b>
Identify relevant facts	<ul style="list-style-type: none"> <li>• identifies and collects all relevant facts, through interviews or examining documents</li> <li>• distinguishes facts that might be used to prove a claim, and resolves any inconsistencies arising from the facts</li> <li>• evaluates the accuracy and reliability of each fact</li> <li>• determines the need for and feasibility of further factual investigation</li> </ul>
Identify legal, practical, and client issues and conduct the necessary research arising from those issues	<ul style="list-style-type: none"> <li>• documents and organizes factual information as it is gathered, in a form suitable for efficient and effective retrieval and analysis</li> <li>• analyzes the facts to identify any existing or potential legal or other issues</li> <li>• identifies any questions of law raised by the matter</li> </ul>
Ascertain the clients' goals and objectives	<ul style="list-style-type: none"> <li>• identifies the problem and the client's goals and objectives as fully as is practicable</li> <li>• confirms the goals and objectives with the client</li> </ul>
Analyze the results of research	<ul style="list-style-type: none"> <li>• identifies and interprets any relevant statutory provisions, cases or other sources</li> </ul>

Apply the law to the facts	<ul style="list-style-type: none"> <li>• applies the law to the facts of the matter in an appropriate and defensible way</li> <li>• documents and organises factual and appropriate legal information in the form of a brief to the lawyer</li> <li>• stays abreast of any developments that may affect the research</li> <li>• keeps up with any developments that might affect the research</li> </ul>
Form an opinion as to the client's legal entitlements	<ul style="list-style-type: none"> <li>• explains options and gives the client advice in a way the client can easily understand</li> <li>• confirms advice in writing, where appropriate</li> <li>• informs the client of any new developments that might affect previous advice</li> </ul>
Identify and assess possible remedies	<ul style="list-style-type: none"> <li>• develops a range of creative and practical options or strategies to meet the client's goals and objectives</li> <li>• identifies the advantages and disadvantages of pursuing each option or strategy, including costs and time factors</li> <li>• assists the client in understanding and choosing between options in a way that is consistent with the client's resources and good practice</li> <li>• confirms the client's instructions in writing where appropriate</li> </ul>
Develop and implement a plan of action	<ul style="list-style-type: none"> <li>• develops a plan that implements the client's preferred option and assigns responsibilities for action</li> <li>• revises the plan as required by changes in the law or other circumstances</li> <li>• acts to resolve the problem within time limitations, and in accordance with the client's instructions and the lawyer's plan of action</li> <li>• when the plan has been carried out, reports to the client</li> </ul>

## B. Legal Research

A newly called lawyer must:

Competency	Performance Criteria
Identify the question(s) of law	<ul style="list-style-type: none"> <li>• analyzes the facts to identify any existing or potential legal or other issues</li> <li>• identifies any additional facts required to support the relevant legal issues</li> </ul>
Select sources and methods and conduct research	<ul style="list-style-type: none"> <li>• demonstrates knowledge of available primary and secondary sources for legal research, including traditional and electronic resources</li> <li>• frames the issues and facts in a manner appropriate to the search resources selected</li> </ul>
Select sources and methods and conduct search(es)	<ul style="list-style-type: none"> <li>• selects searches efficiently and cost-effectively, given the client's resources and the circumstances of the matter</li> <li>• updates searches as required by good practice</li> </ul>
Analyze and apply guiding principles of case law	<ul style="list-style-type: none"> <li>• interprets the substance of cases and their relevance to the matter</li> <li>• applies and distinguishes legal principles</li> </ul>
Analyze and apply statutes	<ul style="list-style-type: none"> <li>• interprets accurately the substance and relevant details of statutes</li> <li>• applies applicable statutory provisions</li> </ul>
Identify, interpret, and apply results of research	<ul style="list-style-type: none"> <li>• applies the law to the facts of the matter in an appropriate and defensible way</li> <li>• constructs alternative legal arguments with reference to the facts of the matter</li> <li>• identifies the legal remedies applicable to the matter</li> <li>• reaches a valid and practical conclusion</li> <li>• keeps up with any developments that might affect the accuracy of research</li> </ul>
Effectively communicate the results of research	<ul style="list-style-type: none"> <li>• explains to the client the case law, substantive law and procedural steps relevant to the matter</li> <li>• uses language the client can easily understand</li> </ul>

### C. Writing

A newly called lawyer must:

Competency	Performance Criteria
Clearly identify the purpose of the proposed communication	<ul style="list-style-type: none"> <li>• determines the purpose and potential reader(s) of the proposed communication</li> <li>• includes an introductory section that clearly identifies the purpose of the communication</li> </ul>
Use correct grammar and spelling and use language suitable to the comprehension of the reader and the purpose of the communication	<ul style="list-style-type: none"> <li>• assesses the comprehension level of the reader(s) and communicates at that level</li> <li>• expresses concepts with precision, clarity, logic and economy</li> <li>• uses consistent and clear language and sentence structure</li> </ul>
Present the subject of the communication, advice, or submissions in a logical, organized, clear and succinct manner	<ul style="list-style-type: none"> <li>• uses appropriate and logical organizational structure</li> <li>• communicates clearly, avoiding verbose or archaic language</li> <li>• avoids internal contradictions and inconsistencies</li> </ul>
Be persuasive where appropriate	<ul style="list-style-type: none"> <li>• identifies and discusses relevant options in a way the client can easily understand</li> <li>• makes and supports appropriate and practical recommendations</li> <li>• advocates effectively on the client's behalf.</li> </ul>
Be accurate and well-reasoned in legal content and analysis	<ul style="list-style-type: none"> <li>• makes accurate reference to relevant legal principles</li> <li>• articulates relevant legal theories accurately and coherently</li> </ul>
Communicate with civility	<ul style="list-style-type: none"> <li>• uses language that is courteous and respectful</li> </ul>

## D. Legal Drafting

A newly called lawyer must:

Competency	Performance Criteria
Identify the purpose of the document	<ul style="list-style-type: none"> <li>identifies the goal of the document</li> </ul>
Effectively organize the document	<ul style="list-style-type: none"> <li>devises an effective form and structure for the document, having regard to the parties, circumstances, good practice, good drafting and the relevant law</li> </ul>
Be able to draft an original transactional document without a precedent	<ul style="list-style-type: none"> <li>drafts an original document effectively having regard to the principles of drafting in simple straightforward language, and the relevant law</li> </ul>
Use precedents appropriately	<ul style="list-style-type: none"> <li>recognizes the danger of using precedents without careful consideration of their applicability in each case</li> <li>identifies, analyses and adapts appropriate precedents for use in specific transactions</li> </ul>
Use clear language appropriate to the document	<ul style="list-style-type: none"> <li>considers the potential reader(s) of the document</li> <li>drafts the document in straightforward language which conveys its purpose clearly and can be easily understood by potential readers</li> </ul>
Draft a legally effective and enforceable document	<ul style="list-style-type: none"> <li>analyzes the principles of law applicable to the purpose, form and language of the document</li> <li>applies relevant statutory and common law principles</li> <li>takes every action required to make the document effective and enforceable in a timely manner and according to law, including execution by parties, registration or filing, and service</li> </ul>
Understand and be able to explain a legal document	<ul style="list-style-type: none"> <li>accurately describes and explains the elements, concepts and consequences of the document in language the client can easily understand</li> <li>understands and accurately explains legal documents drafted by others</li> <li>prepares written memoranda of law, opinion letters, reporting letters, and other documents that address details of the transaction to either the client or third party to whom the lawyer is reporting</li> </ul>
Identify and implement all necessary steps to enforce a legal document	<ul style="list-style-type: none"> <li>takes every action required to make the document effective and enforceable in a timely manner and according to law, including execution by the parties, registration or filing, and service</li> </ul>

## E. Interviewing and Advising

A newly called lawyer must:

Competency	Performance Criteria
Determine the clients' goals, objectives and legal entitlements	<ul style="list-style-type: none"> <li>• prepares for the interview, having regard to relevant information available before the interview</li> <li>• identifies the client's goals and objectives</li> <li>• determines whether the client's goals and objectives can be met through legal processes and ethical solutions</li> </ul>
Use appropriate questioning techniques to ensure the interview is thorough, effective and efficient	<ul style="list-style-type: none"> <li>• understands the basic communication processes and interpersonal dynamics involved in interviewing</li> <li>• conducts the interview using communication techniques appropriate to both the client and the context</li> </ul>
Be understood by the interviewee	<ul style="list-style-type: none"> <li>• asks questions to determine interviewee's level of comprehension</li> <li>• uses clear and appropriate language</li> <li>• identifies and appropriately deals with verbal, non-verbal and cross-cultural aspects of the interview</li> </ul>
Manage client expectations	<ul style="list-style-type: none"> <li>• makes sure the client's instructions are clear, and explains any limitations relating to those instructions</li> <li>• explains frequency and form of reports to the client</li> <li>• provides detailed explanation of fees and gives a clear estimate of the likely end cost to the client, where possible</li> <li>• documents all such discussions</li> </ul>
Establish and maintain rapport and an open communication relationship with the client	<ul style="list-style-type: none"> <li>• demonstrates effective listening skills</li> <li>• demonstrates a courteous and professional attitude</li> <li>• ensures that the client and lawyer have both obtained all the information they wanted from the interview in a timely, effective and efficient way, having regard to the circumstances</li> </ul>
Clarify instructions and retainers	<ul style="list-style-type: none"> <li>• ensures that the lawyer and the client leave the interview with a common understanding of the client's instructions and any future action that the lawyer or the client is to take</li> <li>• confirms instructions in writing</li> </ul>

	<ul style="list-style-type: none"> <li>explains the nature and terms of any retainer agreement, and expectations regarding payment</li> <li>confirms client's understanding of any retainer agreement</li> <li>drafts a retainer agreement for client's signature, if appropriate</li> <li>takes any other necessary action</li> </ul>
Explain and assess possible courses of action with the client	<ul style="list-style-type: none"> <li>ensures that client clearly understands the relevant options, and the potential risks, cost and likely outcome of each course of action</li> </ul>
Document the interview	<ul style="list-style-type: none"> <li>makes a record of the interview that satisfies the requirements of law and good practice</li> <li>documents in writing or otherwise the answers to questions asked, and advice given</li> <li>takes any follow up action in a timely manner</li> </ul>

## F. Advocacy and Dispute Resolution

A newly called lawyer must:

<b>Competency</b>	<b>Performance Criteria</b>
Advocate persuasively to advance a client's position	<ul style="list-style-type: none"> <li>assesses the strengths and weaknesses of both the client's and opponent's cases, or the client's legal rights and the legal elements of the offence with which the client is charged</li> <li>identifies the facts and evidence required to support the client's case</li> <li>identifies all litigative and non-litigative means of resolving the case, having regard to the client's circumstances</li> <li>advises the client of relevant rights and remedies in a way the client can easily understand, and assists the client in choosing the best course of action</li> <li>confirms in writing any instructions given by the client in response to initial advice, where possible</li> <li>identifies and complies with the relevant limitation periods</li> </ul>

<p>Negotiate effectively on behalf of a client</p>	<ul style="list-style-type: none"> <li>• identifies the strategy and tactics to be used in negotiations, and discusses them and clarifies the scope of authority with the client</li> <li>• communicates effectively with the opposing side and evaluates the other side's positions, demands and offers objectively and accurately</li> <li>• carries out negotiations effectively having regard to the strategy and tactics adopted, the client's goals and objectives, the circumstances of the case and good practice</li> <li>• obtains the best possible outcome for the client</li> <li>• documents the negotiation and any resolution as required by law or good practice, and explains it to the client in a way the client can easily understand</li> </ul>
<p>Know and observe procedures and etiquette of the forum</p>	<ul style="list-style-type: none"> <li>• demonstrates procedural knowledge, respect and civility</li> </ul>
<p>Assess the issues</p>	<ul style="list-style-type: none"> <li>• assesses the strengths and weaknesses of both the client's and opponent's cases</li> <li>• identifies facts and evidence required to support the client's case</li> <li>• identifies all litigative and non-litigative means of resolving the case, having regard to the client's circumstances</li> <li>• identifies and complies with limitation periods</li> </ul>
<p>Advise the client</p>	<ul style="list-style-type: none"> <li>• advises the client of relevant rights and remedies in a way the client can easily understand, and assists the client in choosing the best course of action</li> <li>• confirms in writing any instructions given by the client in response to initial advice, where possible</li> </ul>
<p>Represent the client effectively in trial or hearing</p>	<ul style="list-style-type: none"> <li>• identifies an appropriate claim or defence</li> <li>• identifies a court of appropriate jurisdiction</li> <li>• identifies all the legal and factual elements of the claim or defence</li> <li>• develops a viable theory of the case and a litigation strategy</li> <li>• follows procedures for bringing the claim or making the defence in a timely manner and in accordance with the court's rules</li> <li>• drafts and files all necessary documents in accordance with the court or tribunal's procedures</li> <li>• identifies any strategic or other need for interlocutory steps or default proceedings in a timely manner and in accordance with the court or tribunal's rules</li> </ul>

	<ul style="list-style-type: none"><li>• makes written and oral submissions and arguments persuasively and coherently in accordance with law and good practice</li><li>• identifies procedures for enforcing an order or settlement according to law and the court or tribunal's rules, and performs the enforcement in a timely manner</li></ul>
Effectively prepare, present and test evidence	<ul style="list-style-type: none"><li>• identifies issues likely to arise in a court or tribunal proceeding</li><li>• identifies evidence needed to prove the client's case or disprove the opponent's case, according to the rules of evidence</li><li>• gathers the required documentary or other evidence</li><li>• identifies and briefs appropriate witnesses and experts</li><li>• presents that evidence according to law and the court or tribunal's rules</li><li>• effectively examines and cross-examines witnesses</li></ul>
Represent the client effectively at alternative dispute resolutions	<ul style="list-style-type: none"><li>• evaluates the range of non-litigative mechanisms for resolving disputes, including arbitration, mediation and conciliation</li><li>• considers the advantages of alternative dispute resolutions and explains them to the client</li><li>• performs effectively the lawyer's role of protecting the client's interests in the mediation process</li><li>• documents any resolution as required by law or good practice and explains it to the client in a way the client can easily understand</li></ul>

## 2. PERSONAL PRACTICE MANAGEMENT AND OFFICE MANAGEMENT SKILLS:

To acquire appropriate management skills in the areas of personal practice and office practice an Articled Clerk must understand the importance of managing time, managing files, billings and client relations. The Articled Clerk must understand and demonstrate an appreciation of the importance of appropriate communications with the Articled Clerk's clients, staff and others who support the Articled Clerk's work.

A newly called lawyer must:

<b>Competency</b>	<b>Performance Criteria</b>
Manage time effectively	<ul style="list-style-type: none"> <li>• uses a diary or other system to record time limits or deadlines, and to assist in planning work</li> <li>• ensures that time, efforts and resources are properly allocated to the various required tasks</li> <li>• identifies conflicting priorities as they arise and manages the conflict effectively</li> <li>• monitors the status of ongoing work and avoids taking on more work than can be accomplished competently</li> <li>• uses available time effectively, to the benefit of the clients, employer and the lawyer</li> </ul>
Use project management appropriately	<ul style="list-style-type: none"> <li>• determines the steps necessary to complete the project</li> <li>• establishes and meets a schedule for the completion of each step in the project</li> <li>• delegates tasks where appropriate</li> <li>• monitors delegated tasks and takes responsibility for the quality of the outcome of each step in the project</li> </ul>
Effectively use diaries/limitation reminders	<ul style="list-style-type: none"> <li>• selects an appropriate diary or limitation reminder system</li> <li>• regularly uses the diary or limitation system to record deadlines and limitations, and to plan work</li> </ul>
Have timely and on-going client communications	<ul style="list-style-type: none"> <li>• communicates with the client during the course of the matter as frequently as circumstances and good practice require</li> <li>• confirms oral communications in writing when requested by the client or required by good practice</li> <li>• deals with the client's requests for information promptly</li> </ul>

	<ul style="list-style-type: none"> <li>• informs the client fully of all important developments in the matter, in a way the client can easily understand</li> </ul>
Develop a client base	<ul style="list-style-type: none"> <li>• develops and implements a plan for retaining existing clients, and attracting new clients</li> </ul>
Employ risk avoidance in practice	<ul style="list-style-type: none"> <li>• conducts each matter in a way that minimizes any risk to the client, lawyer or firm arising from missed deadlines, negligence or failure to comply with the requirements of the law, a court or other body</li> <li>• recognizes the limits of the lawyer's expertise or experience, and refers the client or matter to other lawyers or other professionals, as the circumstances require</li> </ul>
Use technology proficiently	<ul style="list-style-type: none"> <li>• demonstrates knowledge of basic office technology and is able to analyse and select appropriate office applications</li> <li>• is able to operate technology where appropriate</li> </ul>
Balance professional life with personal life	<ul style="list-style-type: none"> <li>• recognizes the importance of maintaining balance between professional obligations and personal life</li> <li>• seeks out appropriate resources</li> <li>• implements a plan to achieve such balance</li> </ul>
Effectively manage documents	<ul style="list-style-type: none"> <li>• implements a system for organizing, recording, storing and retrieving, by electronic or other means, all documents generated in the course of practice</li> <li>• develops and implements a schedule and system for destruction of documents, as required by law and good practice</li> </ul>
Understand and employ quality control	<ul style="list-style-type: none"> <li>• implements a system for quality control</li> <li>• takes personal responsibility for the quality of all work produced directly or through delegation</li> <li>• regularly reviews and evaluates the efficacy of office systems and procedures, so as to identify problems, correct deficiencies and continually improve procedures</li> </ul>
Effectively bill and collect accounts	<ul style="list-style-type: none"> <li>• demonstrates familiarity with various forms of billing and collecting fees</li> <li>• accurately records all communications, attendances and disbursements with details of dates, times and amounts</li> <li>• demonstrates knowledge of the procedural and ethical rules applicable to billing and collections</li> </ul>

	<ul style="list-style-type: none"> <li>renders and delivers timely bills, in accordance with law and any agreement between the lawyer and client relating to the basis for calculating the lawyer's fees</li> </ul>
Follow trust and general accounting rules appropriately	<ul style="list-style-type: none"> <li>deals with all money received from or on behalf of a client as required by Society rules and good practice</li> <li>maintains any trust account in accordance with specific statutory requirements, including any requirements relating to trust account deposits and auditing</li> </ul>
Employ an appropriate file and precedent organization	<ul style="list-style-type: none"> <li>uses a file management system to ensure that work priorities are identified and managed; client's documents are stored in an orderly and secure manner; and to alert the lawyer to the need to follow up on a matter or give it other attention</li> <li>collects and stores suitable precedents in an accessible format</li> </ul>
Avoid conflicts of interest	<ul style="list-style-type: none"> <li>understands the principles and consequences of conflicts of interest, and the relevant professional ethical standards.</li> <li>recognizes and solves any conflict of interest problems</li> <li>implements a system to avoid potential conflicts of interest</li> </ul>
Appropriately use diaries/limitation reminders	<ul style="list-style-type: none"> <li>compares alternatives for diaries and limitation reminder systems</li> <li>selects and implements the most appropriate system, according to firm requirements and personal preference</li> </ul>
Use appropriate methods of record keeping/archiving/file destruction	<ul style="list-style-type: none"> <li>compares alternative systems for record-keeping, archiving and file destruction</li> <li>selects and implements the most appropriate alternative system</li> </ul>

### 3. ETHICS AND PROFESSIONAL RESPONSIBILITY

To acquire appropriate competency in ethics and professional responsibility, an Articled Clerk must understand a lawyer’s duty to the courts, clients, the public, other members of the profession and the Articled Clerk. The Articled Clerk must be able to recognize circumstances that give rise to ethical problems and recognize that such problems benefit from prompt and serious attention and from guidance from others. The Articled Clerk must demonstrate an appreciation of the lawyer’s duty to maintain and enhance the reputation of the profession, including acting in a respectful, non-discriminatory manner, protecting all client confidences and discharging undertakings. The Articled Clerk must also demonstrate an understanding of the need for continuing professional development and the limits of professional competency.

A newly called lawyer must:

<b>Competency</b>	<b>Performance Criteria</b>
Demonstrate professional courtesy and good character in all dealings	<ul style="list-style-type: none"> <li>• demonstrates professional courtesy, dignity and civility in all dealings with clients, colleagues and others</li> <li>• maintains the highest standards of good character</li> <li>• identifies and seeks help or treatment for personal problems that might interfere with the lawyer’s ability to serve clients</li> </ul>
Maintain and enhance the reputation of the profession	<ul style="list-style-type: none"> <li>• recognizes and performs voluntary contributions to the legal profession and the community, where appropriate</li> </ul>
Recognize an obligation to pursue professional development to maintain and enhance legal knowledge and skills	<ul style="list-style-type: none"> <li>• maintains competence by identifying deficiencies in the lawyer’s substantive or procedural knowledge and skills</li> <li>• identifies and pursues learning opportunities to improve knowledge and skills continually</li> </ul>
Act in a respectful, non-discriminatory manner	<ul style="list-style-type: none"> <li>• deals with all others with professionalism and civility</li> <li>• refrains from discriminating in any way against other lawyers, staff, clients and members of the public</li> <li>• recognises and respects cross-cultural issues</li> </ul>
Recognize the limitations on one’s abilities to handle a matter and seek help where appropriate	<ul style="list-style-type: none"> <li>• understands the duty to provide competent representation</li> <li>• recognizes deficiencies in the lawyer’s experience, knowledge and skill</li> <li>• identifies and approaches appropriate sources of assistance or referral on tasks and matters that fall outside the lawyer’s competence</li> <li>• communicates to the client the reasons for any referral</li> </ul>

	<ul style="list-style-type: none"> <li>• monitors referred and delegated work to ensure it is completed appropriately and in a timely manner</li> </ul>
Recognize circumstances that give rise to ethical problems or conflicts	<ul style="list-style-type: none"> <li>• evaluates critically the ethical propriety of practices and potential courses of action</li> <li>• seeks guidance from advisory bodies and other lawyers where appropriate</li> <li>• takes action which complies with professional ethical standards</li> <li>• identifies any potential or actual conflict of interest, as soon as is reasonable in the circumstances</li> <li>• takes effective action to avoid a potential conflict or, where a conflict has already arisen, deals with it in accordance with law and professional ethical standards</li> <li>• takes appropriate action, where applicable, to prevent conflicts of interest from arising in the future</li> </ul>
Recognize and discharge all duties and undertakings	<ul style="list-style-type: none"> <li>• identifies any duty, obligation or undertaking imposed on the lawyer by law or rules of professional conduct in a particular situation</li> <li>• discharges that duty, obligation or undertaking according to law and good practice</li> <li>• imposes and accepts only trust conditions and undertakings that are reasonable and capable of performance</li> <li>• recognizes and complies with any fiduciary duty, according to law and good practice</li> </ul>
Protect confidences	<ul style="list-style-type: none"> <li>• demonstrates understanding of solicitor-client privilege</li> <li>• keeps all client matters strictly confidential, except where required by law</li> <li>• refrains from discussing client matters outside of the office</li> </ul>
Know and apply professional ethical standards	<ul style="list-style-type: none"> <li>• identifies any applicable rules of professional conduct or ethical standards</li> <li>• takes action which complies with those rules</li> </ul>